

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

---

ANDREW FRANZ,

Petitioner,

v.

Case No. 18-C-908

SHERIFF CORY ROESELER,

Respondent.

---

**ORDER ADOPTING REPORT AND RECOMMENDATION  
AND DISMISSING PETITION**

---

Petitioner Andrew Franz, who is currently incarcerated at Sheboygan County Detention Center, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On July 6, 2018, Magistrate Judge Nancy Joseph screened his petition and filed a Report and Recommendation, in which she recommends that the petition be dismissed. Franz filed an objection to the Report and Recommendation on July 13, 2018. For the following reasons, the court adopts Magistrate Judge Joseph's Report and Recommendation in full.

Franz asserts that his Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendment rights were violated, resulting in his false imprisonment by fiduciary officers of a non-court of law. He also claims that he has no access to a law library and is being held in "supermax" conditions and that the state court and prosecutor have violated his due process rights. Franz' petition will be dismissed without prejudice because he has not attempted to exhaust his state court remedies. As explained in Magistrate Judge Joseph's Report and Recommendation, while § 2241(c) does not explicitly require exhaustion, federal courts may "require, as a matter of comity, that such detainees exhaust

all avenues of state relief before seeking the writ.” *United States v. Castor*, 937 F.2d 293, 296–97 (7th Cir. 1991) (citing *Baldwin v. Lewis*, 442 F.2d 29, 31–33 (7th Cir. 1971)); *see also Richmond v. Scibana*, 387 F.3d 602, 604 (7th Cir. 2004). In short, Franz’ petition will be dismissed because he has not exhausted his state court remedies. The court notes that 28 U.S.C. § 2241 is to be used by a pre-trial detainee to challenge his detention. It appears Franz has asserted claims that go to the conditions of his confinement. These claims are not the proper subject of a habeas petition but may be challenged under 42 U.S.C. § 1983.

The court therefore adopts the Report and Recommendation of the Magistrate Judge and orders the petition **DISMISSED without prejudice** so that Franz may exhaust his state court and administrative remedies.

**SO ORDERED** this 17th day of July, 2018.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court